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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,059	11/18/2003	Lewis Timothy Lukich	DN2003186	4788

27280 7590 03/26/2007  
THE GOODYEAR TIRE & RUBBER COMPANY  
INTELLECTUAL PROPERTY DEPARTMENT 823  
1144 EAST MARKET STREET  
AKRON, OH 44316-0001

EXAMINER
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MAKI, STEVEN D

ART UNIT	PAPER NUMBER
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1733

MAIL DATE	DELIVERY MODE
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03/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/716,059	<b>Applicant(s)</b> LUKICH ET AL.	
	<b>Examiner</b> Steven D. Maki	<b>Art Unit</b> 1733	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 02 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the <sup>response</sup> ~~proposed amendment(s)~~ a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see advisory action attachment.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

Advisory Action Attachment

Applicant acknowledges: "The Sandstrom reference ... is directed to an agricultural tire with a tread configured with raised, spaced apart lugs, which may have a low NTG ratio (in a range of only 15 to 22 percent) and of an isobutylene copolymer-based rubber composition ..." (pages 4-5 of response filed 3-2-07).

Applicant argues that Sandstrom et al is materially deficient in a sense of not providing any teaching or suggestion to provide its butyl rubber agricultural tire tread with a closed cellular rubber composition. This argument is not persuasive since Cole and Egan motivate one of ordinary skill in the art to form Sandstrom et al's entire tread such that it has closed cells so as to obtain higher dampening characteristics and desired ride qualities (softer ride).

Applicant argues that Egan and Cole fail to teach or suggest any isobutylene-based tire tread with raised, spaced apart, very low NTG ratio ground-contacting lugs to enable a cushioning effect to extend through low NTG, spaced apart raised lugs. The claimed concept of an isobutylene-based tire tread with raised, spaced apart, very low NTG ratio ground-contacting lugs is furnished by Sandstrom et al. The fact that the secondary references individually do not provide a specific teaching of every aspect of applicant's claimed invention does not mitigate the obviousness of applying their teaching to modify Sandstrom et al in the manner proposed in 103 rejection. As noted above, Cole and Egan motivate one of ordinary skill in the art to form Sandstrom et al's entire tread such that it has closed cells so as to obtain higher dampening characteristics and desired ride qualities (softer ride).

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Applicant argues and examiner agrees that the optional Japan 209's foam rubber extends through a layer on the outside of the tread lugs. Examiner adds that Cole and Egan suggest using closed cell rubber for the *entire* tread of an off-road tire. Examiner further adds that the optional Japan 209 suggests using closed cells in the rubber of the tread area even when the specific type of off road pneumatic tire is a *pneumatic agricultural tire* as per the teachings of Sandstrom et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is (571) 272-1221. The examiner can normally be reached on Mon. - Fri. 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steven D. Maki  
March 23, 2007

  
STEVEN D. MAKI 3-23-07  
PRIMARY EXAMINER